

AMENDED IN ASSEMBLY APRIL 28, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

**ASSEMBLY BILL**

**No. 900**

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**Introduced by Assembly Member De Leon**  
**(Coauthors: Assembly Members Emmerson, *Fuller*, *Gilmore*, *Salas*,  
and *Solorio*)**

February 26, 2009

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An act to amend Sections 5101 and 5103 of the Water Code, relating to water diversion.

LEGISLATIVE COUNSEL'S DIGEST

AB 900, as amended, De Leon. Water diversion: statements of water diversion and use.

Existing law, with certain exceptions, requires each person who diverts water after December 31, 1965, to file with the State Water Resources Control Board a prescribed statement of diversion and use. Existing law requires a statement to include specified information, including, on and after January 1, 2012, monthly records of water diversions. Under existing law, the monthly record requirement does not apply to a surface water diversion with a combined diversion capacity from a natural channel that is less than 50 cubic feet per second or to diverters using siphons in the tidal zone.

This bill would delete an exception to the statement requirement for diversions included in the consumptive use data for the delta lowlands published by the department in its hydrologic data bulletins. *The bill would add an exception to the statement requirement for a surface water diversion from the Sacramento-San Joaquin Delta, as defined, that has a combined diversion capacity of less than 10 gallons per minute.* The bill would, commencing January 1, 2011, impose the monthly record

requirement on any surface water diversion ~~of any size that has a specified diversion capacity~~ that is within the ~~Sacramento-San Joaquin Delta, as defined~~ Delta, ~~unless the board makes a specified determination~~. The bill would also provide that the monthly record requirement would not apply to a surface water diversion that is outside of the ~~Sacramento-San Joaquin Delta~~ Delta, and that has a combined diversion capacity from a natural channel that is less than 50 cubic feet per second. The bill would make related findings and declarations.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) The San Francisco Bay-Sacramento-San Joaquin River Delta
- 4 (Delta) is in the midst of an ecological crisis. Its unique character
- 5 and capacity to serve California are threatened by a variety of
- 6 factors, including diversions of water, pollution, urbanization,
- 7 flood and seismic risks, and invasive species.
- 8 (b) The water that is found in, and delivered through, the Delta
- 9 is the source of drinking water for 25,000,000 Californians, fuels
- 10 a \$37,000,000,000 agricultural industry, and serves as an important
- 11 habitat for over 750 plant and animal species.
- 12 (c) It has been estimated that there are approximately 1,800
- 13 agricultural, municipal, and industrial diversions in the Delta that,
- 14 combined, divert 5 percent of the freshwater flows from the Delta
- 15 watershed. However, because none of these in-Delta diverters are
- 16 required to measure and report their water diversion and use, there
- 17 is presently little data regarding the nature, extent, and location of
- 18 these diversions.
- 19 (d) Given the well-known importance of water to the state's
- 20 health, economy, and welfare, including to its ecosystems and
- 21 natural resources, water measurement and reporting is required in
- 22 virtually every part of the state, except in the Delta.
- 23 (e) In order to develop the information necessary to inform
- 24 impending decisions regarding the allocation and use of water in,
- 25 and delivered through, the Delta, a baseline of water diversion
- 26 information from in-Delta diversions is necessary and appropriate.
- 27 SEC. 2. Section 5101 of the Water Code is amended to read:

1     5101. Each person who, after December 31, 1965, diverts water  
2 shall file with the board, prior to July 1 of the succeeding year, a  
3 statement of his or her diversion and use, except that a statement  
4 is not required to be filed if the diversion is any of the following:

5     (a) From a spring that does not flow off the property on which  
6 it is located.

7     (b) Covered by an application, permit or license to appropriate  
8 water on file with the board.

9     (c) Included in a notice filed pursuant to Part 5 (commencing  
10 with Section 4999).

11     (d) Regulated by a watermaster appointed by the department.

12     (e) Reported by the department in its hydrologic data bulletins.

13     (f) *A surface water diversion from the Sacramento-San Joaquin*  
14 *Delta, as defined in Section 12220, that has a combined diversion*  
15 *capacity of less than 10 gallons per minute.*

16     ~~(f)~~

17     (g) Included in annual reports filed with a court or the board by  
18 a watermaster appointed by a court or pursuant to statute to  
19 administer a final judgment determining rights to water, which  
20 reports identify the persons who have diverted water and give the  
21 general place of use and the quantity of water that has been diverted  
22 from each source.

23     ~~(g)~~

24     (h) For use in compliance with the provisions of Article 2.5  
25 (commencing with Section 1226) of Chapter 1 of Part 2.

26     SEC. 3. Section 5103 of the Water Code is amended to read:

27     5103. Each statement shall be prepared on a form provided by  
28 the board. The statement shall include all of the following  
29 information:

30     (a) The name and address of the person who diverted water and  
31 of the person filing the statement.

32     (b) The name of the stream or other source from which water  
33 was diverted, and the name of the next major stream or other body  
34 of water to which the source is tributary.

35     (c) The place of diversion. If a public land survey has been  
36 made, location of diversion works shall be described to the nearest  
37 40-acre subdivision. If not, it shall be described by reference to  
38 nearest local landmarks or other recorded surveys.

(d) The capacity of the diversion works and of the storage reservoir, if any, and the months in which water was used during the preceding calendar year.

(e) (1) On and after January 1, 2012, monthly records of water diversions. The measurements of the diversion shall be made using best available technologies and best professional practices. Nothing in this paragraph shall be construed to require the implementation of technologies or practices that are not locally cost effective.

(2) Except as specified in paragraph (3), paragraph (1) does not apply to a surface water diversion that is outside of the Sacramento-San Joaquin Delta, as defined in Section 12220, and that has a combined diversion capacity from a natural channel that is less than 50 cubic feet per second.

(3) Commencing January 1, 2011, paragraph (1) shall apply to any surface water diversion ~~of any size that is within the Sacramento-San Joaquin Delta, as defined in Section 12220.~~ *that has a combined diversion capacity of 10 gallons per minute or greater that is within the Sacramento-San Joaquin Delta, as defined in Section 12220, unless the board determines that requiring the reporting of those diversions is necessary for the efficient management of water rights.*

(4) (A) The terms of, and eligibility for, any grant or loan awarded or administered by the department, the board, or the California Bay-Delta Authority on behalf of a person that is subject to paragraph (1) shall be conditioned on compliance with that paragraph.

(B) Notwithstanding subparagraph (A), the board may determine that a person is eligible for a grant or loan even though the person is not complying with paragraph (1), if both of the following apply:

(i) The board determines that the grant or loan will assist the grantee or loan recipient in complying with paragraph (1).

(ii) The person has submitted to the board a one-year schedule for complying with paragraph (1).

(C) It is the intent of the Legislature that the requirements of this subdivision shall complement and not affect the scope of authority granted to the board by provisions of law other than this article.

(f) For persons not subject to paragraph (1) of subdivision (e), a description of the acreage of each crop irrigated, the average number of people served with water, the average number of stock

1 watered, and the nature and extent of any other use during the  
2 preceding calendar year, or other equivalent information that  
3 indicates the quantity of water used as may be prescribed by the  
4 board. Those who maintain water measuring devices and keep  
5 monthly records of water diversions shall state the quantity of  
6 water diverted by months during the preceding calendar year.

7 (g) The purpose of use.

8 (h) A general description of the area in which the water was  
9 used. If the water was used on an area within the  $\frac{1}{16}$  section  
10 containing the point of diversion, a statement to that effect will  
11 suffice; otherwise a description or sketch of the general area of  
12 use shall be given.

13 (i) The year in which the diversion was commenced as near as  
14 is known.